

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

CYNDEE SMITH,)
Plaintiff)
v.) No. 3:04cv0498 AS
CASTAWAYS FAMILY DINER, and)
CARROL ANN GONZALEZ,)
Defendants)

MEMORANDUM AND ORDER

This court takes notice of the record in this case and has before it the Report and Recommendation of United States Magistrate Judge Christopher A. Nuechterlein. Frankly, it looks like both sides should have done homework in this matter early on, but that did not happen. The magistrate judge obviously did it for them. He is absolutely correct on the law, and although this court has some reluctance in the matter, it does now adopt and approve the recommendation of the magistrate judge. The motion for sanctions is **DENIED**, and the motion to establish jurisdiction is **DENIED AS MOOT**. It will be the intent of this court to set this case for pretrial conference at an early time in South Bend, Indiana. **IT IS SO ORDERED.**

DATED: May 12, 2005

s/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT

cc: The Honorable Christopher A. Nuechterlein